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16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **SAN FRANCISCO DIVISION**

20 IN RE: UBER TECHNOLOGIES, INC.,
21 PASSENGER SEXUAL ASSAULT
22 LITIGATION

Case No. 3:23-md-03084-CRB

23 This Document Relates to:
ALL ACTIONS
24
DEFENDANTS UBER TECHNOLOGIES,
25 INC., RASIER, LLC, AND RASIER-CA,
LLC'S ADMINISTRATIVE MOTION TO
SEAL THE JOINT DISCOVERY LETTER
AND EXHIBITS FOR THE CLAWBACK
CHALLENGE

Judge: Hon. Lisa J. Cisneros
Courtroom: G – 15th Floor

1 Pursuant to Pretrial Order No. 14 entered in this case, dated April 24, 2024, ECF 396 (“PTO
 2 14”) and the Protective Order entered in this case, dated December 28, 2023, ECF 176 (“Protective
 3 Order”), Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively “Uber”),
 4 respectfully submit this Administrative Motion to Seal the Joint Discovery Letter and Exhibits for the
 5 Clawback Challenge, dated June 24, 2024, ECF 663. Plaintiffs have consented to this motion.

6 On June 24, 2024, Uber filed a Joint Discovery Letter asking for the Court to uphold their
 7 claims of privilege over three documents. Uber respectfully requests that the Court seal the following
 8 submissions:

Document	Description	Designating Party
The Parties’ Letter Brief re: Clawback Challenge	Portions of briefing referring to documents the Parties filed under seal	Uber
Ex. 1 UBERMDL3084-0000933385	A document subject to the Clawback Challenge produced and marked by Uber as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY by Uber in this litigation.	Uber
Ex. 2 UBERMDL3084-000093391	A document subject to the Clawback Challenge produced and marked by Uber as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY in this litigation.	Uber
Ex. 3 UBERMDL3084-000093421	A document subject to the Clawback Challenge produced and marked by Uber as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in this litigation.	Uber

1 PTO 14 requires that when there is a Clawback Challenge “[t]he joint discovery letter brief must
 2 be filed under seal.” ECF 396, at 3. Here, the documents that Plaintiffs dispute as privileged are
 3 provided as exhibits, and there is additional good cause for the Court to seal those documents. Each of
 4 these documents contain confidential, privileged, and commercially sensitive business information if
 5 they were widely distributed.

6 When courts consider motions to they apply the “good cause” standard of Rule 26(c) of the
 7 Federal Rules of Civil Procedure because such records “are often ‘unrelated, or only tangentially
 8 related, to the underlying cause of action.’” *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1179 (9th
 9 Cir. 2006) (citation omitted); *accord Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF, 2020 WL
 10 6387381, at *1 (N.D. Cal. Feb. 24, 2020). In contrast, filings that are more directly related to a case’s
 11 merits “may be sealed only upon a showing of ‘compelling reasons’ for sealing.” *Adtrader, Inc.*, 2020
 12 WL 6387381, at *1 (quoting *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th
 13 Cir. 2016)).

14 The “lesser” good cause standard applies here because Uber seeks to maintain the sealing of a
 15 filing connected to a discovery motion that is not more than tangentially related to this case’s merits.
 16 *Adtrader, Inc.*, 2020 WL 6387381, at *1; *see also Brown v. Google LLC*, No. 20-cv-03664-YGR (SVK),
 17 2022 WL 4227545, at *1 (N.D. Cal. Aug. 9, 2022) (“Here, the ‘good cause’ standard applies because
 18 the information the parties seek to seal was submitted to the Court in connection with discovery-related
 19 motions, rather than a motion that concerns the merits of the case.”); *cf. United States v. Selugh*, 896
 20 F.3d 1007, 1015 (9th Cir. 2018) (“[M]aterials submitted to a court for its consideration of a discovery
 21 motion are actually one step further removed in public concern from the trial process than the discovery
 22 materials themselves.” (citation omitted)). Accordingly, “the general history of access and the public
 23 policies favoring disclosure” do not apply as strongly. *Kamakana*, 447 F.3d at 1178–79.

25 “‘Good cause’ is a non-rigorous standard that has been construed broadly across procedural
 26 and statutory contexts.” *Ahancian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). The
 27

1 “good cause” sealing standard is the same standard that applies to the entry of a protective order in
 2 civil discovery. *See Fed. R. Civ. P. 26(c)(1)* (“The court may, for good cause, issue an order to protect
 3 a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . .”). It
 4 “gives the district court much flexibility in balancing and protecting the interests of private parties.”
 5 *Kamakana*, 447 F.3d at 1180.

6 “Good cause” exists for sealing the documents here. First, PTO 14 requires that these
 7 documents be sealed. ECF 396, at 3. Second, there is no dispute that Exhibits 1 and 2 contain attorney-
 8 client privileged information. Shortnacy Decl. ¶¶ 16, 17. Third, Exhibit 3 is similarly an internal
 9 document that Uber claims attorney-client privilege and it further contains confidential information as
 10 noted by the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation. Shortnacy
 11 Decl. ¶ 18. Plaintiffs’ have not challenged that designation. Each of these documents contains non-
 12 public information, including commercially sensitive and business information. Uber has a legitimate
 13 interest in sealing in order to avoid harm to its competitive standing. There are no less restrictive
 14 alternatives to sealing these documents.

15
 16 No less restrictive alternative to sealing portions of the Parties’ Letter Brief and corresponding
 17 Exhibits 1, 2, & 3 is sufficient. *Cf. Local Rule 79-5(c)(1)(iii)*. The material that Uber proposes sealing
 18 contains sensitive information that this Administrative Motion is intended to protect from public
 19 dissemination. As such, actions short of sealing would violated PTO 14 and be insufficient to protect
 20 Uber’s competitive standing.

21
 22 For the foregoing reasons, Uber respectfully requests that the Court order that portions of
 23 the Parties’ Letter Brief containing redacted materials and corresponding Exhibits 1, 2, and 3 be
 24 maintained under seal.

1 DATED: June 24, 2024

Respectfully submitted,

2 **SHOOK HARDY & BACON L.L.P.**

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